IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Crl.Rev.Pet.No. 3674 of 2007()

CRA.463/2005 of SESSIONS COURT, THRISSUR
ST.1492/2002 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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REVN. PETITIONER: APPELLANT/ACCUSED:

A.K.PREMKUMAR, AGED 59 YEARS,
S/O.KRISHNAN, ALAKKAL HOUSE, P.O.NATTIKA,
THRISSUR DIST.

BY ADV. SRI.M.B.PRAJITH

RESPONDENTS: RESPONDENTS/COMPLAINANT:

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1. COSMOPOLITAN SOCIAL AND RECREATION
CLUB, KALLETUMKARA, REPRESENTED BY ITS CHIEF
EXECUTIVE AND PRESIDENT GEORGE,
S/O.K.K.CHERIYA, KALLIVALPPIL HOUSE, KALLETUMKARA,
THRISSUR DISTRICT.

2. STATE REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3674 of 2007

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Dated: 16-10-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No. 1492 of 2002 on the file of the Chief Judicial Magistrate, Thrissur challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel appearing for the revision petitioner contended that Ext.P9 application for loan will show that loan was applied for on 28-1-1998 where as Ext.P1 cheque is dated 16-8-2002 on which date the loan had become time barred. It is now well settled that a time barred debt can also constitute the consideration for a negotiable instrument and by issuing the negotiable instrument it

amounts to acknowledgment of the debt. Hence, the view taken by the courts below is justified.

5. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of **Rs. 100000/- (Rupees one lakh only)** within **five months** from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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